

# Lex Terra

## News Updates on Environmental Law

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“What's the use of a fine house if you haven't got a tolerable planet to put it on?”

— Henry David Thoreau

The rate at which we are exploiting the Earth at present is at its highest. A bit of awareness can help change this. *Lex Terra* is a mode of creating awareness. An effort made by the Seventh Semester Environmental Law Specialisation Students of B.A.,LL.B, it is an extension of a classroom exercise which the students under Asstt. Prof. Chiradeep Basak intend to put forward to the entire family of NLU-A. A bit of contribution here and a bit of contribution there from each one of us is what the Earth desperately needs at this point of time. Through *Lex Terra*, the students intend to highlight important happenings in the field of Environment which we all must be aware of.

Every issue of *Lex Terra* would be a collection of various Environment specific news items which will be touching various facets of environmental law as well. Law is the best instrument to usher in any kind of change and change in our approach towards our interaction with the environment is a necessity right now.

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## About CELAR

The primary mission of Centre for Environmental Law, Advocacy and Research (CELAR) of National Law University, Assam is to engage in advocacy and research on public interest environmental issues. For the purpose, it will organize workshops and seminars to educate and develop skills, convene conferences to promote exchange of ideas, conduct training programmes for capacity building in environmental law issues, undertake research on legal concerns and publish

periodically, newsletters and journals.

The objectives of the CELAR are as follows:

- To inspire and educate students by providing hand-on advocacy experience and direct exposure to the issues.
- Strengthen access to justice by undertaking high quality multi-disciplinary research on contemporary legal issues pertaining to environment.
- Advocate for reforms in environmental law through

scientifically sound legislative proposals.

- Organise training programmes for strengthening the legal capacity building on environmental laws doe civil servants, law enforcement authorities, non-governmental organizations and media personnel.
- Publish periodically journals and newsletters on environmental law.

— **Professor (Dr.) Yugal Kishore,**  
**Centre Head, CELAR**

## Message from Team *Lex Terra*

Dear Readers,

*Lex Terra* proudly presents it's seventh issue for all the would be legal eagles and scholars of NLU, Assam. With your continuous support, she will maintain her tempo and share all relevant news vis-a-vis environment, through this virtual interface.

We congratulate the *Lex Terra* team for its praiseworthy collective efforts.

The team of *Lex Terra* wishes to thank all of those who supported this initiative. We would like to express out gratitude to our respected Vice- Chancellor, Prof. (Dr.) Vijender Kumar for his continuous support and timely inputs. We would like to thank Prof. (Dr.) Yugal Kishore, the Centre Head of CELAR for his help and encouragement. Lastly, we would like to thank Mr. Chiradeep Basak, Centre Co-ordinator of CELAR, who has been a source of inspiration from the outset, along-side his unrelenting contribution to all phases of the

job, from planning, to setting clear goals and appraising the outcome.

It gives us immense delight to inform our readers that we are going to have separate segment from 6th issue on short articles, case studies/ legislative/case commentaries on environmental law from NLUA students, every fortnight.

Our issues goes online every 1st and 16th of each month. Contributions for the next issues are invited. The same will be reviewed and then published online. Maximum of 10 write ups will be part of this segment.

Please keep pouring down your support and concern for mother nature.

Thank you

Happy Reading!



Courtesy- Google

# ENDING RURAL HUNGER BY 2030: AN EFFECTIVE ACTION PLAN FOR FOOD & NUTRITION SECURITY

*Chiradeep Basak,  
Assistant Professor of Law &  
Knowledge Enthusiast*

193 countries of the United Nations came together with an ambitious Sustainable Development Goals recently. Ending global hunger is one of the realistic goals, which has to be attained within 15 years. As per Global Economy and Development's report, Ending Rural Hunger Mapping needs and Actions for Food and Nutrition Security:

"The international community must shift from a pattern of erratic political attention and inadequate measurement of the underlying issues to a sustained, strategic, and evidence-based commitment to food and nutrition security"

This raises a concern and dire need to review the existing policy framework with respect to Food and Nutrition Security (FNS) in the developing and less/least developed countries. This review/assessment should not only be quantitative but also systematic. In order to assess it, several parameters need to be checked, which includes: investments in FNS, health, public distribution and safety standards. Albeit these parameters need to be in proper alignment with that of standards in developed countries but there is a hiccup as regards this alignment. The socio-economic, legal shape and structure of developing and LDCs might not be same as developed countries. We cannot even discard the lack of political will and horrid political scenario of developing/LDCs.

Ending rural hunger as part of SDG, aims to solve these issues with a practical approach. If we seriously look into the practicality of the SDGs and its relevance from the lens of current trends, it can be clearly concluded that ending global hunger, malnutrition by maximizing agricultural productivity of small scale farms is far from reality. Our perception of "business as usual" will not be sufficient enough to meet the ends but some emerging trends can address the issues. They are:

The developing countries are moving agricultural biased strategies within their development targets

Energy and transport is priority now because this will boost small scale farming

Development of new varieties of seeds is an emerging trend via promotion of agricultural research

The high level initiatives under the aegis of G20 and African Union can fortify and ensure long term returns

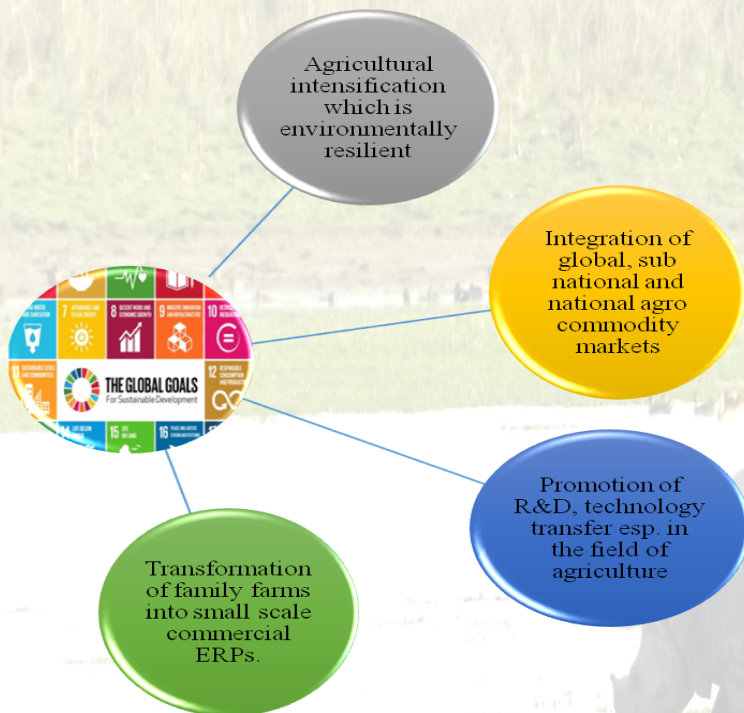
PPP (Private Public Partnership) can solve issues relating to FNS by integration of small scale farms into the global value chains

The distortions created by the developed countries in the global agricultural markets should be reduced in order to help the developing and LDCs to ensure FNS. Developed countries should also contribute to FNS by financial resources. One of the major challenges in front of FNS is high border tariffs on agricultural products. In some cases, they use several non tariff barriers to distort imports w.r.t agricultural products. This needs to be checked with a global effort.

"Simple applied tariff rates on agriculture in the European Union (EU) are currently 13.2 percent, compared with 4.2 percent for non-agricultural goods. In the United States, they are 5.3 percent and 3.1 percent, respectively. Consequently, although globalization has made major advances in other sectors of the global economy, agricultural markets remain highly fragmented. As one measure, the share of agricultural exports in total global agricultural value added is only 40 percent, compared with over 100 percent in manufacturing."

The picture is clear and apparent, all the major stakeholders have to integrate and proceed to achieve the goal of FNS. Unless, we have a collective action on the table, we cannot attain the set goal. Our policy frame should consider some of the crucial aspects like:

farmers, can only achieve its goal, when it receives enough impetus from policy framers, effective implementers and effectual justice delivery mechanism.



*Starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat*  
**- Amartya Sen**

These factors can be the key elements to end global hunger and especially rural hunger by 2030. Hence, the developed countries should reduce distortions in agro policies and promote both qualitatively and quantitatively, the quality of aid for FNS. In absence of collective action and joint implementation, we cannot curb rural hunger. In India, we have several parallel issues in rural areas, which are equally responsible for poor welfare. Environmental governance in our country has seen a paradigm change in last few decades. We have seen several success stories like community management, participatory and decentralized governance but those have not attained their highest potential. In time, we need to change our “let it be the way it is” mentality and take keen interest in nation building. An agricultural country, whose backbone is



UN Photo/Martine Perret *Courtesy— Google*

**Courtesy:** Ending Rural Hunger: Mapping Needs and Actions for Food and Nutrition Security – A Brookings Global Economy and Development Report, available at [http://www.indiaenvironmentportal.org.in/files/file/ERH\\_Full\\_Report.pdf](http://www.indiaenvironmentportal.org.in/files/file/ERH_Full_Report.pdf) last seen on 27/11/2015.

# CONSERVING THE ENVIRONMENT IN JUDAISM

- Prithvi Raaj Choudhury

*"If you are amazed at how it is possible to speak, hear, smell, touch, see, understand and feel—tell your soul that all living things collectively confer upon you the fullness of your experience. Not the least speck of existence is superfluous; everything is needed, and everything serves its purpose. 'You' are present within everything that is beneath you, and your being is bound up with all that transcends you."*

- Rabbi Avraham Yitzchak Kook, Former Chief Rabbi of erstwhile Palestine.

The Torah reminds the people that trees symbolise a healthy environment. Trees take a long time to bear fruits, and hence it is the duty of the people to plant more and more trees. Deuteronomy 20:19-20 asks the question, "Is the tree of the field a man, to come in during the siege before you?", meaning that fruit trees are not to be cut during wartime, hence against the 'scorch earth' policy. Many rabbinical sages have given their opinions regarding this, but have mostly echoed the stand of the Scriptures. Rabbi Rashi had once said that trees not being an enemy to Man, Man in turn has no right to cut trees. Destroying trees may be compared to as if destroying human life itself, since human lives are very much dependent on it.

Psalms 22:7 reminds mankind that humans are not superior, and that all humans are at par with all creatures of this world. The food chain has to be conserved. A rodent would need buds and shoots for its diet. A snake would need rodents for its energy, and so on. Thus, human beings have no right to break or alter the food chain which has been engineered by God. God has bestowed distinct traits to all living beings, likewise, a lion would not be aware of global warming, and cannot

be expected to conserve the environment! It is mankind that has been given the duty to protect and conserve the earth.

Bal Tashchit a Jewish commandment asks not to waste resources unnecessarily. It applies to wasting energy, money, electricity, food. This is to remind people that there are people who do not have enough food to eat, and needless wastage of these things would be shameful. Many Rabbis also agree to the fact that taking more food which one cannot eat is wastage of resource and contra vent to bal tashchit. This is so important that, even a 'mustard seed' cannot be wasted.

Hence, Man has no right over all other resources and creatures, but is expected to conserve, refine, perfect and elevate them. The environment can only be used in a positive manner, when it is used in a constructive way, and to enhance the world by using them. Man is the tree of the field. It should not be thought of a crusade or battle to conserve mother nature, but to appreciate and respect its presence around us.

We can pluck an orange off a tree, and eat it. We can use the energy from this food for destructive purposes, we can use it neutrally,

for optional acts; or—and this is its purpose—use it towards constructive ends. We have the power and dominance over nature; we have the ability to destroy it, maintain its neutral state, or elevate it. This is why there are two reasons why Man was the last Creation of God in Eden. Firstly, we first set the table and then invite our special guest to eat. Secondly, if we misbehave and start destroying beyond limits, we are reminded that even the unimportant, small insect was created before Man. This explains that humans are obliged to continue their humility and respect their fellow creatures around.

The widely popular saying in the 'Spiderman' movie: "With power comes great responsibility", exactly tells us about our role in the world towards the environment.

In this era of development and progress, these concessions may seem to be absurd to many. But we have to take a stand to respect our role as torchbearers as guardians of this planet. God has created only one world for us to live. We have to ensure that our future generations to come explore the treasures of this world.

## HUNTING TRIBES OF NORTHEAST: A THREAT TO WILDLIFE CONSERVATION

Hunting of wild animals and birds by the tribal people has become a major concern for conservationists in India. Northeast India with over 166 major tribal groups faces the highest risk on its wildlife due to hunting. The tribal people have been hunting wild animals since ages. However, in recent times their method of hunting has changed. New weapons, methods and techniques are now being applied by the tribal people, which have posed a serious threat to the wildlife of the region. In many parts of Nagaland, Manipur and Mizoram there are large tracts of forests without any wildlife inside it. The traditional methods of hunting caused far less damage than the newer methods. Earlier, the reason for hunting was sustenance and was therefore limited, but in recent times it has changed to commercial hunting for profit making. The tribal people living inside forests have easy access to wild animals including tigers, rhinos and bears. The body parts of which can fetch millions of rupees in the global animal market. In recent times, the poachers with the help of the tribal people have hunted down a lot of animals in the region. In Kaziranga National Park itself, it was seen that the poachers took help and assistance from Karbi and Mishing tribesmen living in the vicinity of the park. Similarly in Manas National Park also the Bodo tribesmen carried out poaching and hunting activities easily due to their easy access to the forests.

Wildlife species are protected from hunting and trade through

the Wildlife (protection) Act, 1972. But hunting in Eastern Himalaya, which was traditionally for subsistence, has become trade oriented among the tribal people of the region. Hunting and trading of animals and their parts still continue at an exceptionally high scale. Many people advocate it as rights of the tribal people and a part of their tradition but such arguments in favour of hunting would only lead to the extinction of wildlife species in this rich eco-region of Eastern Himalays and Northeast India. Therefore, a solution to this is urgently needed. In places like Northeast India, where forest use and wildlife hunting is part of the daily lives of human population, conservation in any form will not be easy, whether it is through protected areas or through community participation.

Although nature conservation projects carry good intentions, they often fail to engage with the socio-political and historical realities of how communities have evolved. Moreover, conservation workers have little appreciation of the

- *Abhishek Chakravarty*

indigenous concept of nature and local ways of conservation, and therefore conservation programmes have had little success trying to educate people about conservation. Therefore, the conservation programmes must keep in account the aspirations and the traditions of tribal people as well without compromising with the hunting of wildlife species. Also, the local people should be given incentives for the protection of wildlife rather than their destruction. This will also create a lot of positive result.

Therefore, the challenge before the Government as well as conservation Non-Governmental Organisations (NGOs) like the World Wide Fund for Nature (WWF) is to find a middle ground where conservation can run hand in hand with communities' aspiration for which a holistic understanding is vital. Attention is needed not only from ecologists but also from social scientists, conservationists and those from the development sector who must work together to save the species from extinction.



Photograph by— *Abhishek Chakravarty*

# DO THE BIRDS HAVE FUNDAMENTAL RIGHTS: AN ANALYSIS

- Raman Virk

Humans first started domesticating animals centuries ago for their own convenience. Domestic animals were useful to great extents. For example, for trade purposes, for wars and above all for dairy products and they still are domesticated for certain specific purposes. But, when human started keeping the birds for his amusement, the history is unknown. Birds can never be domesticated like other animals and so they are captured in cages. Since, the much-inherited trait of the birds is to fly, they can't be kept as pets like dogs or cats, and so they are mostly kept in cages. Birds, unlike other domestic animals like dogs and horses, if they are freed the very first activity would be to fly.

It is an irony that the idea of airplanes invented by the humans was inspired from the birds and today, he is capturing these birds, devoiding them of their right to fly freely and himself proudly flying in the sky. A recent news on November 21, 2015 that Supreme Court will soon decide whether the exotic birds have a fundamental right to be free, has once again spurred the debate on the issue after Gujarat and Delhi High Court's judgments that the birds have a fundamental 'right to fly'. The Supreme Court will answer the fundamental question of whether exotic birds are safer in cages or do they have a fundamental right to fly.

We need to analyze both sides of the coin. The birds in maintaining the ecological balance play an important role. Their decreasing numbers are beginning to take a disastrous toll on India's forests

since birds are needed to spread seeds in order to thrive. According to PETA (*People for the Ethical Treatment of Animals*) "It is estimated that, for every Parakeet or Munia bird in captivity, one fewer tree grows in India." Also the PETA research shows that, "Out of the 300 species of birds which are traded, 16 are among the world's most highly endangered, 36 are listed in the Convention on International Trade in Endangered Species and six are included on the Red Data list of endangered species compiled by the International Union for the Conservation of Nature and Natural Resources." We need to understand that unlike domesticated dogs and cats, captive-bred birds are only a few generations removed from their wild ancestors, so many of their natural behaviors do not mix well with human companionship. Millions of wild birds are still smuggled illegally and traded on the black market to meet the demand for the pet trade, collectors and bird fighting. The impact of the global trade on wild bird populations, particularly parrots, has been devastating. Today, nearly one-third of all parrot species are threatened with extinction due to habitat loss and collection. However, if the already kept pet caged birds are set free, it may have harsher consequences. Since most of the bird species that are traded have not been raised in the wild and as a result they have lost their instincts for hunting and self-preservation. Such birds would simply not survive if let free in the open.

Coming to the legal regime in India, the Wildlife Protection Act (WPA) 1972 making it illegal to catch, keep,

kill, buy/sell birds or damage their nests. Also the act places a blanket ban on the keeping indigenous bird species in captivity and trading them. But the import of certain species of non-Indian birds is actually allowed by law, as long as the necessary licenses are obtained. Trade in foreign birds is restricted by CITES. There is also an international protocol to which India is a signatory, which assures full protection to all migratory species, making it illegal to trap, capture, keep, kill or trade these birds. It is illegal to keep any birds in captivity with the only exceptions being lovebirds and blue rock pigeon.

Therefore, my suggestion is that, there is a dire need to enact strong laws. Firstly, there must be complete ban on the keeping of birds in cages even at homes. Secondly, if the existing pet birds are unable to survive in the wild, laws must be stringent enough to ensure that proper care is taken of these birds by the owners. *If only we humans could understand that these birds are intelligent, they can feel, communicate and socialize with one another, they would realize that keeping them caged is the most terrible thing we could do to them. Birds are meant to fly and be with others of their own kind.*

**Courtesy:** *Birds have fundamental rights, can't be kept in cages: Delhi High Court*, The Economic Times, May 17, 2015; Krishnadas Rajagopal, 'SC to decide if exotic pet birds have a right to fly', The Hindu, November 21, 2015; 'India's Bird Trade: Bird Trading Wreaks Ecological Havoc', PETA Online, *There Is No Such Thing as a 'Cage Bird'*, PETA Online, Aarefa Johari, 'Birds have fundamental right to fly but don't go around freeing caged creatures, warn activists', May 19, 2015

## SIGNATURE BRIDGE

- Irfan Hasieb

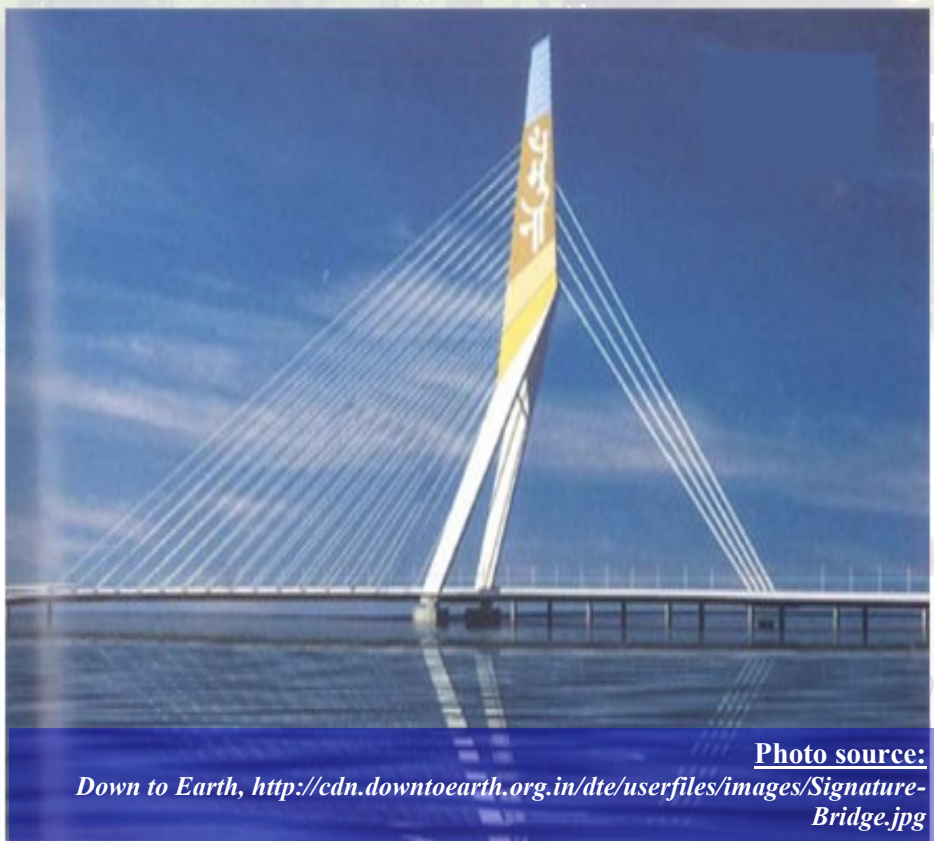
In 2004, the Delhi Tourism and Transportation Development Corporation (DTTDC) proposed the construction of a bow shaped, cable supported steel bridge over the river Yamuna in New Delhi connecting the Outer Ring Road on the Western bank and Wazirabad Road on the Eastern bank. The initial construction cost of the eight lane, 675 metres long bridge was estimated to be Rs. 887 crore and was supposed to be completed before the 2010 Commonwealth Games in New Delhi. The bridge is modelled on the London Bridge and the bridge is being constructed by Gammon and two other firms based in Italy and Brazil. The constructors have already missed five deadlines and the cost of the bridge is supposed to escalate to more than Rs. 1, 500 crores.

However, a major environmental concern has been raised after a plea was filed in the National Green Tribunal (NGT) by Vikrant Kumar Tongad, an environmental activist based in Noida. The plea by Mr. Tongad sought a stay order over the construction until an environmental clearance is obtained. The Ministry of Environment, Forests and Climate Change (MoEFCC) in reply to the plea, relying upon the Environment Impact Assessment Notification (EIA), 2006 contended that, the bridge does not require environmental clearance as it is a development project and not a physical infrastructure project like a

road. The DTTDC further stated that, when it had applied to the MoEFCC for obtaining EC in 2007 the Ministry had informed that, bridges are exempted under EIA Notification 2006. The NGT (in February, 2015) had asked the Government to obtain a fresh environmental clearance (EC). According to the NGT, construction of a bridge or any other similar activity over a built up area of more than 1, 50, 000 square metres would come under EIA notification 2006. Accordingly, a fresh presentation was made before the State Environment Impact Assessment Authority (SEIAA) and the State Expert Appraisal Committee (SEAC) and they were of the opinion that a fresh Environment Impact Assessment

(EIA) was required since the EIA of the bridge was done nine years ago.

The purpose of the EIA Notification of 2006 is to impose restrictions and prohibitions on projects and activities, or on the expansion or modernization of existing projects and activities based on their environmental impacts. A prior environmental clearance must be obtained either from the Central Government or the State Level Environment Impact Assessment Authority, constituted by the Central Government under the Environment Protection Act, 1986.



**Photo source:**

*Down to Earth, <http://cdn.downtoearth.org.in/dte/userfiles/images/Signature-Bridge.jpg>*



## CASE ANALYSIS

### SHAKTISINH GOHIL & OTHERS V. UNION OF INDIA & OTHERS

- Sweden Doley

India's rapid economic development requires a considerable supply of energy. Most of India's electricity requirements are met through import, which proves as a challenge to meet the rising demand. In such context, the Indian Government is rapidly moving towards adopting an aggressive policy for nuclear energy expansion. The Indian Nuclear Energy Programme aims to provide 25 per cent of the electricity requirements by 2050. However, there has been tremendous opposition from the public (especially after the unfortunate Fukushima Nuclear Disaster) against proposed nuclear power plants because of the structures of nuclear energy establishments in India, which increases its inherent risks. Much to the dismay of the public, the Government seems not affected by the increasing public opposition for nuclear energy power plant projects.

The proposed 6,000MW capacity Mithi Viridi Nuclear Plant at Bhavnagar, Gujarat has been facing opposition from the public. Since, its proposal way back in 2008 as part of the India-US Civil Nuclear Deal, the proposed nuclear plant had been finally able to get its required clearance. However, the inhabitants of the villages around Mithi Viridi have strongly opposed the project and are adamant about giving up their land irrespective of the compensatory package. After the authorities made serious procedural lapses and the Bhavnagar District Collector denied the villagers and other environment experts from making oral presentation, the officials

were greeted with tremendous opposition by around 4,500 people at an Environment Public Hearing (EPH) held in 2013 for the plant. The issue took an ugly turn after the authorities directed the Nuclear Power Corporation of India Ltd officials to make Environment Impact Assessment (EIA) report presentation without taking into account the local people's opinions. The local people termed the EPH as illegal since there was no proper public hearing. The villagers also raised question against the violation of procedural norms and referred to the Delhi High Court's judgement in the case Samarth Trust & Others v. Union of India & Others, where it was held that all persons, irrespective of whether they live in close proximity of the affected area or not could participate and express their views and opinions for or against such projects. In spite of such protest against the establishment of the proposed plant, the Ministry of Environment, Forest and Climate Change granted Coastal Regulatory Zone (CRZ) clearance on 03 March 2015. In respect to their opposition, the Village Sarpanch Mr. Shaktisinh Gohil, after coming across a newspaper report on the CRZ order for the plant, filed an application for appeal in the National Green Tribunal against the CRZ clearance.

#### Courtesy:

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